

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

VICKY EVANS; and,
GREGORY EVANS,

Plaintiffs,

vs.

Civil Action No.2:15-cv-02355

BOB EVANS FARMS, LLC,

Defendant.

NOTICE OF REMOVAL

To: Thomas R. Greer
Bailey & Greer, PLLC
6256 Poplar Avenue
Memphis, TN 38119

Bob Evans Farms, LLC, by and through counsel, hereby removes this action to the United States District Court for the Western District of Tennessee, Western Division, pursuant to 28 U.S.C. Sections 123, 1332, 1441 and 1446, and would show the following:

A. Introduction

1. On April 17, 2015, Plaintiffs Vicky Evans and Gregory Evans (collectively, "Plaintiffs") filed this personal-injury lawsuit in the Circuit Court of Shelby County, Tennessee (Case No. CT-001651-15), seeking monetary damages for Bob Evans Farms, LLC's alleged negligence, which allegedly caused Plaintiff Vicky Evans to slip and fall in the Bob Evans Restaurant in Memphis, Tennessee, and sustain serious injuries. (See complete copy of Circuit Court Action, including the Complaint, attached

hereto as Exhibit 1). As demonstrated below, this Court has diversity jurisdiction under 28 U.S.C. Section 1332, and this case is removable under 28 U.S.C. Section 1441.

B. Facts

1. According to the Complaint in the Circuit Court of Shelby County, Tennessee, Plaintiffs allege that on or about January 2, 2015, Vicky Evans was a patron of the Bob Evans Restaurant located at 8445 U.S. Highway 64, Memphis, Tennessee. (See Complaint ¶ 9, Exhibit 1). On this date, after Mrs. Evans and her party had been seated, she got up to walk her grandson to the restroom. While walking from her table to the restroom, she allegedly slipped and fell on the “wet surface of the tile walkway.” (*Id.*) Mrs. Evans alleges the “wet floor” signs on the floor were not positioned where they could be seen by patrons seated in the section where Mrs. Evans was. (*Id.*) As a result of her fall, Mrs. Evans alleges that she was seriously injured. (*Id.*)

2. Plaintiffs allege that Mrs. Evans’ slip and fall, and resulting injuries, were a direct result of the negligence of Bob Evans Farms, LLC, without any negligence on her part. (See Complaint ¶ 17, Exhibit 1). Plaintiffs further allege that Bob Evans Farms, LLC should have taken responsible steps to prevent the surfaces of high-traffic walking areas from becoming or remaining unreasonably slick or slippery. (See Complaint ¶ 18, Exhibit 1). Plaintiffs also allege that Bob Evans Farms, LLC, should have avoided mopping floors during high-traffic walking areas during “peak time” or any time when they may reasonably expect a significant number of restaurant patrons to walk on them (See Complaint ¶ 19, Exhibit 1); and should not have allowed restaurant patrons’ sole means of access to restrooms to become slick or slippery by completely mopping the only walkway by which the restrooms can be reached, (See Complaint ¶ 20, Exhibit 1)

3. Mr. Evans is also alleging damages for loss of love, society, affection and consortium of his wife of a past; present and future nature, loss of service; incidental and consequential damages stemming from attending to the injuries of his wife; post-judgment interest; statutory and discretionary costs; and all such further relief, both general and specific to which Plaintiff Gregory Evans is entitled. (See Complaint ¶ 29 (subparagraphs A through F), Exhibit 1).

C. Diversity of Citizenship Jurisdiction

1. Defendant Bob Evans Farms, LLC removes this action pursuant to this Court's diversity of citizenship jurisdiction under 28 U.S.C. Section 1332. Plaintiffs and Bob Evans Farms, LLC are completely diverse and the amount in controversy exceeds \$75,000.00.

2. As stated in the Complaint, Plaintiffs are citizens and residents of Memphis, Shelby County, Tennessee. (See Complaint ¶ 1 and 2, Exhibit 1).

3. Defendant Bob Evans Farms, LLC, is an Ohio limited liability company doing business in Tennessee whose principal place of business is 8111 Smiths Mill Road, New Albany, Ohio 43054-1183. Bob Evans Farms, LLC is the owner and operator of the restaurant known as "Bob Evans Restaurant" located at 8445 U.S. Highway 64, Memphis, Tennessee, the restaurant at issue in this case. (See ¶ 2 of the Affidavit of S. Camille Reifers, attached hereto as Exhibit 3). Therefore, Plaintiffs and Bob Evans Farms, LLC are completely diverse.

4. Though no specific amount is demanded in the Complaint, Plaintiff Vicky Evans demanded judgment against Bob Evans Farms, LLC in the amount of five hundred thousand dollars (\$500,000). Plaintiff Gregory Evans made a demand against

Defendant in the amount of fifty thousand dollars (\$50,000); both demands total five hundred fifty thousand dollars (\$550,000).

5. For these reasons, this Court has diversity jurisdiction under 28 U.S.C. Section 1332, and, under 28 U.S.C. Section 1441, removal is proper.

D. Compliance with Procedural Requirement

1. As shown above, this case is one over which this Court has original jurisdiction. The Western Division of the Western District of Tennessee is the division and district embracing Shelby County, the venue where the state court action was filed and is pending. 28 U.S.C. § 1446(a); 28 U.S.C. Section 123(c)(2); Local Rule LR3.3 of the Western District of Tennessee.

2. Plaintiffs served their Complaint and Summons on Bob Evans Farms, LLC on April 17, 2015; therefore, pursuant to 28 U.S.C. Sections 1441 and 1446(b), this Notice of Removal is timely filed within thirty days of receipt by Bob Evans Farms, LLC of service of process. (See ¶ 3 of the attached Affidavit of S. Camille Reifers).

3. Pursuant to 28 U.S.C. Section 1446(a), Bob Evans Farms, LLC will electronically file a certified copy of the entire Shelby County Circuit Court file with this Court within fourteen days.

4. Bob Evans Farms, LLC is giving written notice of the filing of this Notice of Removal to Plaintiffs and a copy of this Notice will be duly filed with the Clerk of the Circuit Court of Shelby County, Tennessee, as required by 28 U.S.C. Section 1446(d). (See Notice of Removal, attached hereto as Exhibit 2).

5. Bob Evans Farms, LLC respectfully requests this Court to proceed with the handling of this case as if it had been originally filed herein, and hold that further proceedings in the Circuit Court of Shelby County, Tennessee, be stayed.

Respectfully submitted,

BOYLE BRASHER, LLC

Dated: May 26, 2015

By: /s/ S. Camille Reifers
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Attorney for Defendant,
BOB EVANS FARMS, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been transmitted via United States Mail, postage prepaid, to Thomas Greer, Austin Fleming, Bailey & Greet, PLLC, 6256 Poplar Avenue, Memphis, Tennessee 38119, on this 26th day of May 2015.

/s/ S. Camille Reifers
S. Camille Reifers